

In the Matter of Merchant Mariner's Document No. Z-208148-D3 and all
Issued to: JOHN DENNIS POMPEY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

913

JOHN DENNIS POMPEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec.137.11-1.

By order dated 13 December 1955, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-208148-D3 issued to John Dennis Pompey upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as assistant grill cook on board the American SS ARGENTINA under authority of the document above described, on or about 4 October 1955, while said vessel was in the port of Montevideo, Uruguay, he assaulted a member of the crew, Jose Collazo with a dangerous weapon.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counselor his own choice and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of several members of the crew. Pantryman Diaz was the only disinterested witness to any part of the second incident.

In defense, Appellant offered in evidence his testimony and that of other members of the crew. Appellant stated that Collazo struck the first blow in the galley. As to the more serious charge, Appellant testified that Collazo struck Appellant on his right hand with an iron bar when he left his room; Appellant immediately returned to his room and picked up a paring knife to protect himself; he did not have time to close the door; Appellant warded off further blows with his left hand; he wrestled with Collazo and cut him with the knife.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusion, the Examiner announced his decision and concluded that the charge and two specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Documents No. Z-208148-D3

and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 4 October 1955, appellant was serving as assistant grill cook on board the American SS ARGENTINA and acting under authority of his Merchant Mariner's Document No. Z-208148-D3 while the ship was in the port of Montevideo, Uruguay.

About 2000 on this date, there was an argument in the galley between Appellant and Utilityman Jose Collazo. This was followed by a brief exchange of blows between the two seamen. They were separated by other members of the crew and neither was injured. Appellant went to his room since his duty ended at 2000. Collazo was supposed to remain on duty until 2100.

Shortly after 2000, messman Williams saw Collazo in the recreation room with a 2 1/2 foot long iron bar from the galley range held behind his back. Williams could not persuade Collazo to surrender the bar. Collazo proceeded to the vicinity of Appellant's room and met pantryman Diaz there. Collazo asked Diaz, in a loud voice, where Pompey's room was. Diaz told Collazo to forget about it and to get some sleep. Collazo was still carrying the iron bar. Their conversation took place about 6 or 8 feet from Appellant's room and he heard them talking. Appellant left his room with a three-inch blade paring knife in his right hand. Appellant approached Collazo, pushed him with his left hand and raised his right hand overhead as though to strike Collazo with the knife. A struggle followed in which Collazo received a serious wound in the chest from the knife and two superficial cuts. Appellant's only injury was a swollen right hand.

Collazo was treated in the ship's hospital where it was necessary for two or three members of the crew to restrain him. The ship's physician concluded that Collazo was in a state of delirium tremens from prior excessive consumption of alcohol.

Appellant's prior record consists of a suspension in March 1955 for wrongful possession of ship's stores.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he was justified in acting in self-defense when confronted by a violent maniac who was bent on killing or seriously injuring Appellant with an iron bar. Appellant was not under any duty to retreat.

APPEARANCE: Samuel Segal, Esquire of New York City of Counsel

OPINION

The record does not disclose who initiated the fight in the galley. Most of the witnesses merely testified that they saw Appellant and Collazo fighting at this time. Each participant states that the other one struck the first blow. The Examiner rejected Appellant's version. Little of Collazo's testimony is, by itself, worthy of belief in view of his many denials and assertions which are in direct conflict with the testimony of numerous other witnesses. Under these circumstances, the ultimate finding that Appellant assaulted Collazo in the galley is reversed for lack of proof.

The Examiner rejected Appellant's testimony concerning the later incident and adopted the version presented by Diaz which is set forth in my findings of fact. In addition to the testimony of Diaz, Appellant's story is discredited by the facts that the struggle did not occur in Appellant's room and there was no injury to his left hand or arm which he claims to have used to ward off blows from the iron bar wielded by Collazo. Although Diaz specifically stated that he did not see what happened after Appellant raised his right hand which held the knife, there is no doubt that Collazo's injuries were inflicted by Appellant. In fact, Appellant admits this. The evidence clearly establishes that Collazo was looking for Appellant and would have taken advantage of any opportunity to use the iron bar. Nevertheless, Appellant has no legitimate claim of self-defense since he became the aggressor by leaving his room and approaching Collazo with a knife. If Appellant had remained in his room, it is doubtful that the consequences would have been as serious as they were. Appellant not only did not retreat but he initiated the incident by advancing upon Collazo. It is my opinion that such a serious offense merit the order of revocation imposed by the Examiner despite the failure of proof of the other specification.

CONCLUSION

The specification alleging that Appellant assaulted Collazo in the galley is dismissed. The ultimate finding alleging that Appellant assaulted Collazo with a dangerous weapon is affirmed.

ORDER

The order of the Examiner dated at New York, New York, on 13 December 1956 is ~~REVERSED~~ **AFFIRMED**.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of September, 1956